

# **EXHIBIT 1**

Benjamin Bauer  
12/1/2021

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Civ. No. 20-1913 (ADM/JFD)

Ethan Daniel Marks,  
Plaintiff,  
vs.

Benjamin Bauer, acting in his individual  
capacity as a Minneapolis police officer,

Defendant.

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VIDEOTAPED DEPOSITION TRANSCRIPT OF

BENJAMIN MICHAEL BAUER

December 1, 2021

at

Robins Kaplan, LLP  
800 LaSalle Avenue  
2800 LaSalle Plaza  
Minneapolis, MN 55402

Reporter: Jane T. Doby  
Registered Merit Reporter  
Doby Professional Reporting, Inc.  
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1 proficiency?

2 A Yes, sir.

3 Q Have you -- how would you rate your  
4 proficiency among SWAT less-lethal officers?

5 MS. SARFF: Objection. Calls for  
6 speculation and vague.

7 A Yeah, I don't -- I guess I don't know.

8 BY MR. BENNETT:

9 Q Is there any ranking?

10 A No.

11 Q Any testing, where you'd be ranked 1  
12 through X?

13 A No.

14 Q What's in Zone 1?

15 A So it's the legs, the buttocks. Kind of  
16 the lower region.

17 Q Regions below the belt?

18 A Yes, sir.

19 Q There's one area below the belt that you're  
20 not supposed to shoot for?

21 A You're not supposed to intentionally aim  
22 for the groin.

23 Q Male or female?

24 A Yes, sir.

25 Q Where's Zone 2?

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1 A That's more the, I guess, kind of stomach  
2 area.

3 Q What's Zone 3?

4 A Zone 3 would be from the chest up, sir.

5 Q And they -- you're explained that the head,  
6 neck, and face shots are considered use of deadly  
7 force. Right?

8 A We're explained to not intentionally target  
9 the head.

10 Q Without deadly force authorization?

11 A Yes, I would never intentionally aim for  
12 the head.

13 Q Well, if I had a gun and you had a  
14 less-lethal, you would shoot me in the head, wouldn't  
15 you, if you could?

16 A If that's all I had was a less-lethal and  
17 that's all I can do, yes.

18 Q And talking about that shot in the butt,  
19 you didn't -- you didn't say that was a hard shot,  
20 did you?

21 A I don't think I said that.

22 Q And you shot him with a green marking round  
23 so that he could be arrested even if he got over the  
24 fence?

25 A That was the intent, yes.

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1 BY MR. BENNETT:

2 Q You did not think you were allowed to use  
3 deadly force to stop an unarmed person from  
4 assaulting a police officer unless the officer was in  
5 danger of death or serious -- or imminent serious  
6 harm. Correct? Serious bodily harm?

7 A Yes, I -- I would not use deadly force on  
8 someone unless worried that the officer is in fear  
9 of -- of death or great bodily harm.

10 Q Okay. So you could shoot somebody in  
11 Zone 1 or Zone 2 with your -- that would be  
12 authorized to stop an assault against an officer. Is  
13 that right?

14 A Yes, sir, that would be my intent.

15 Q Did you talk with Bryce Robinson about his  
16 efforts to get Ethan Marks charged with felonies?

17 A No, sir.

18 Q Did you know that was in the works?

19 A Not until recently, sir.

20 Q Did you learn about it recently from  
21 someone other than your attorney?

22 A No, sir.

23 Q You learned it from your attorney?

24 A Yes, sir.

25 Q Okay. Did you also learn that neither the

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1 Q And the impact areas of Zone 3 -- and that  
2 says, "This zone carries the greatest potential for  
3 serious or fatal injury and should be avoided when  
4 possible. It should only be considered when maximum  
5 effectiveness is desired to meet a level of threat  
6 escalating to deadly force."

7 Do you see that?

8 A Yes, sir, I see it.

9 Q Do you agree with that?

10 A Yes, sir.

11 Q And there they include chest, center mass?

12 A Yes, sir.

13 Q Spine, head, and neck. Right?

14 A Yes, sir.

15 Q And they warn you about shooting for the  
16 shoulders and arms. Right? In the next slide?

17 MS. SARFF: I'm going to object to the  
18 extent it misstates the document. And vague as to  
19 the meaning of "warning."

20 BY MR. BENNETT:

21 Q Okay. Well, let's -- read it to me.

22 What -- read me the second and third bullet points.

23 A You want me to read you the second and  
24 third, you said, or should I --

25 Q Second and --